IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

| WALKER, Nathaniel |) |
|---|--|
| Plaintiff, v. |)) Case No: |
| U.S. Department of Homeland Security, Secretary Michael CHERTOFF; United States Citizenship and Immigration Services, Ruth A. DOROCHOFF, Chicago District Director; Jonathan SCHARFIN, Acting Director, USCIS; Michael MUKASEY, US Attorney General and the United States of America, |)) FILED: JUNE 19, 2008) 08CV3512) JUDGE HOLDERMAN) MAGISTRATE JUDGE ASHMAN)) TC |
| Defendants. |) |

COMPLAINT FOR WRIT OF MANDAMUS

NOW COMES the Plaintiff NATHANIEL WALKER (hereinafter "Plaintiff"), by and through his attorneys, AzulaySeiden Law Group, and complains as follows:

STATEMENT OF ACTION

1. This action is brought to compel action on Plaintiff's properly filed Petition for Alien Relative ("Form I-130 Petition") with the United States Citizenship & Immigration Services ("USCIS") in Chicago, Illinois. To the Plaintiff's detriment, Defendants have failed to adjudicate the Application.

PARTIES

- 2. Plaintiff is a native and citizen of the United States. In 2006, Plaintiff filed an I-130 petition on behalf of his wife, Clementina Walker ("Clementina"), which remains pending to this day.
 - 3. Defendant Michael CHERTOFF ("Chertoff"), the Secretary for the Department of

Homeland Security ("DHS"), is being sued in his official capacity only. Chertoff is responsible for adjudication of Form I-130 Petitions pursuant to 8 U.S.C. §1225.

- 4. Defendant, Ruth DOROCHOFF ("Dorochoff"), is the director of USCIS, Chicago, and is being sued in her official capacity only. Dorochoff is charged with supervisory authority over all of Chicago CIS operations and CIS agents and officers acting in their official capacity.
- 5. Defendant, Jonathan SCHARFIN, is the Acting Director of USCIS and is being sued in his official capacity only.
- 6. Defendant, Michael MUKASEY ("Mukasey") is the Attorney General of the United States and is being sued in his official capacity only.

JURISDICTION

- 7. This Court has original jurisdiction to hear both civil actions arising under the laws of the United States and actions to compel an officer or employee of the United States or any agency thereof to perform a duty. 28 U.S.C. §1331; 28 U.S.C. §1361. This Court also has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. §\$2201-2202 and the relief is requested pursuant to these statutes.
- 8. This action is brought to compel the Defendants, officers and an agency of the United States, to perform the duties arising under the laws of the United States.
- 9. This Court has jurisdiction to hear actions arising from claims that an agency or an officer or employee of a government agency failed to act in its official capacity and the person to whom the duty owed suffered a legal wrong. 5 U.S.C. §702.
- 10. This action invokes the Plaintiff's right to due process guaranteed by the Fifth Amendment of the United States Constitution, over which this Court retains jurisdiction.

- 11. This action is brought due to the failure of the USCIS and its officers to perform their duty to adjudicate the Plaintiff's Form I-130 Petitions within a reasonable amount of time. Failure to adjudicate said applications has resulted in harm to the Plaintiff.
- 12. Federal courts retain jurisdiction over adjudication matters when the INS (now USCIS) refuses to adjudicate their applications. <u>Iddir v. INS</u>, 166 F.Supp.2d 1250, 1260 (N.D. Ill. 2001).
- 13. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") does not divest this Court of jurisdiction because the Plaintiff is not seeking a review of a denial; he is seeking to have the applications adjudicated, which is among the duties conferred upon the Defendants by Congress. <u>Id</u>. at 1256.

VENUE

- 14. Venue is proper in this Court pursuant to 28 USC §1391(e), in that this is an action brought against officers and agencies of the United States in their official capacities, in the District where a substantial part of the events or omissions giving rise to Plaintiff's claim occurred.
- 15. Plaintiff's Form I-130 Petition was properly filed and, to Plaintiff's knowledge, remain pending with the National Benefits Center.

EXHAUSTION OF REMEDIES

16. Plaintiff has exhausted all administrative remedies. Plaintiff has made numerous inquiries concerning the status of his Form I-130 Petitions and Defendants have failed to properly respond.

CAUSE OF ACTION

- 17. Plaintiff is a native and citizen of the United States. See Exhibit A.
- 18. In 2005, Plaintiff married Clementina, a native and citizen of Nigeria. See Exhibits B and C.
- 19. On March 12, 2006, Plaintiff filed an I-130 Petition on behalf of his wife, Clementina. This I-130 was rejected as Plaintiff failed to concurrently file an I-485 application.
- 20. Subsequently on March 17, 2006, Plaintiff filed a second I-130 petition on Clementina's behalf along with an I-485 application, both of which remain pending with the USCIS 2 years after their filing. See Exhibits D and E.
- 21. On April 27, 2006, USCIS issued a Request for Evidence requesting additional documentation of the sponsor's federal tax returns. See Exhibit F. Plaintiff, through prior counsel, responded to this request and Defendant acknowledged the response in June 2006.
 - 22. Subsequently, Plaintiff attended an initial interview on December 21, 2006.
- 23. On May 22, 2007, Plaintiff attended an infopass session and was told that their case was still pending. See Exhibit G.
- 24. On April 29, 2008, well beyond 60 days from the RFE receipt date, Plaintiff sent a status inquiry letter to USCIS, however, Plaintiff did not receive a response. See Exhibit H.
 - 25. On May 12, 2008, Plaintiff retained AzulaySeiden Law Group in this matter.
- 26. On June 4, 2008, Plaintiff, through his attorney, attended an infopass at the Chicago, IL. office. USCIS stated that Plaintiff's case was still under review by the officer.
 - 27. On June 10, 2008, Plaintiff made an online inquiry as to the status of his pending I-

130 petition which indicated that the case is pending at the National Benefits Center. See Exhibit

L.

- 28. There has not yet been a decision on Plaintiff's Form I-130 Petition, despite the fact that the petition has been pending for two years and throughout that time numerous inquires have been made with the USCIS.
- 29. Plaintiff has been greatly damaged by the failure of the Defendants to act in accordance with their duties under law: Plaintiff has a meritorious I-130 Petition that has not been adjudicated because of the Defendants refusal to do so.
- 30. The Defendants' delay in processing of Plaintiff's Form I-130 Petitions has further deprived the Plaintiff of his right to due process under the law as guaranteed by the Fifth Amendment of the United States Constitution.
- 31. The Defendants, in violation of the Administrative Procedure Act, 5 U.S.C. §701 et seq. are unlawfully withholding and unreasonably delaying action on Plaintiff's Form I-130 Petitions and have consequently failed to carry out the adjudicative functions delegated to them by law with regard to Plaintiff's case.
- 32. Plaintiff has made numerous status inquiries in an attempt to secure adjudication of his petitions, to no avail. Accordingly, Plaintiff has been forced to pursue the instant action.

PRAYER

WHEREFORE, Plaintiff requests that this Honorable Court enter an order:

(a) Requiring Defendants to adjudicate Plaintiff's Form I-130 Petitions;

| (b) | Awarding Plaintiff reasonable attorney's fees pursuant to 28 U.S.C. §2412 for |
|-----|---|
| | failure of the Defendants to perform their duties within a reasonable amount of |
| | time; and |

| (| (c) | Granting s | uch other | relief at la | w and in e | anity as | iustice may | zso require |
|---|-----|------------|-----------|--------------|------------|----------|-------------|---------------|
| ١ | (U) | Oranting s | uch oulci | iciici at ia | w and m c | quity as | justice may | , so require. |

| Date: | Respectfully Submitted, |
|-------|-------------------------|
| | |
| | |

Carolina Yamazaki AzulaySeiden Law Group 205 North Michigan Avenue 40th Floor Chicago, IL 60601 (312) 832-9200 x 132 JUN-18-2008 16:38

Case 1:08-cv-03512

AZULAYSEIDEN LAW GROUP

Document 1-2

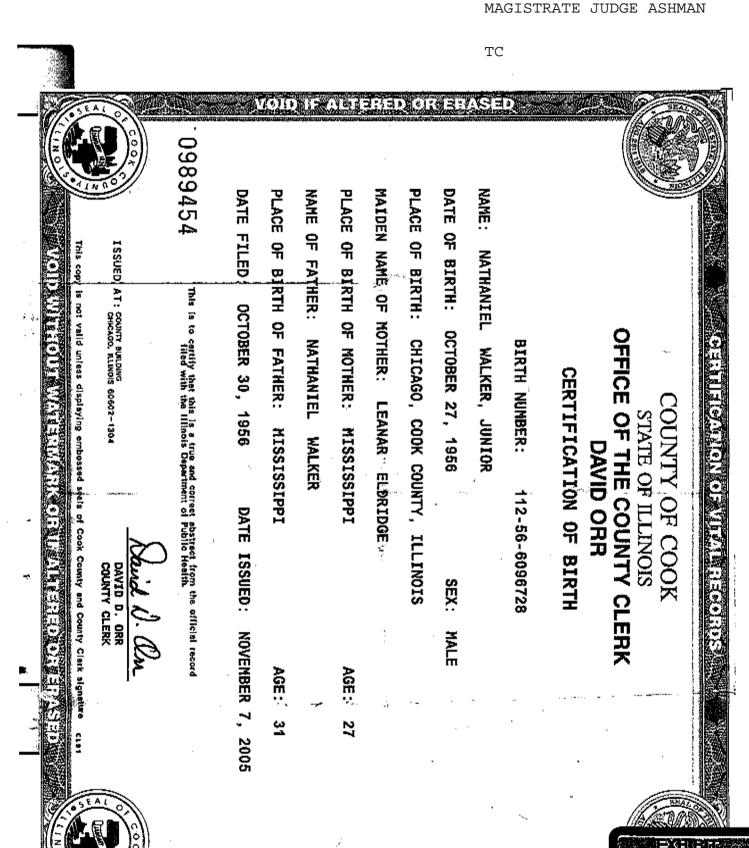
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Page 1 of 11

08CV3512 JUDGE HOLDERMAN



FENDER 14 NOTE TO A LANGE TO THE



COUNTY OF COOK

OFFICE OF THE COUNTY CLERK DAVID ORR

CERTIFICATION OF MARRIAGE LICENSE NUMBER: 0534505-0

BETWEEN

GROOM'S NAME: NATHANIEL

WALKER JR.

AGE:

BRIDE'S NAME: CLEMENTINA AGE: 42

NKEONYELU

O N DATE OF MARRIAGE: DECEMBER 14, 2005

HERE UNITED IN MARRIAGE IN THE COUNTY OF COOK, AND STATE OF ILLINOIS

CIVIL

NAME: NARCELLA C. LIPINSKI OFFICIATE TITLE: JUDGE

PLACE OF MARRIAGE: MARKHAM, ILLINOIS

DATE RECORDED: JANUARY 05, 2006 APPLICATION DATE: DECEMBER 05, 2005

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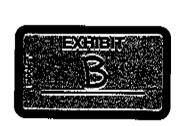
This is to certify that this is a true and correct abstract from the official record filed with the office of the Cook County Clark.

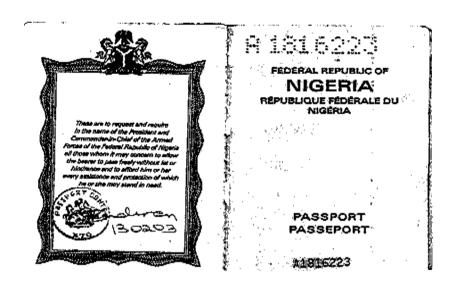
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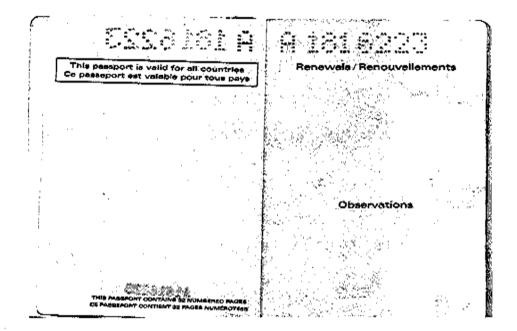
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COUNTY CLERK

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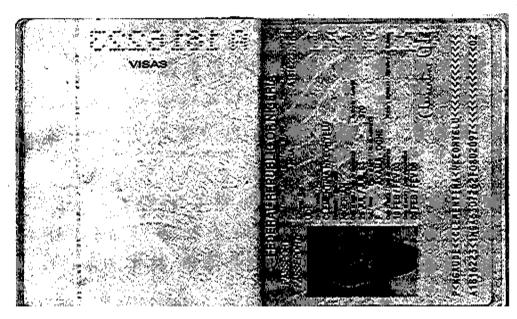


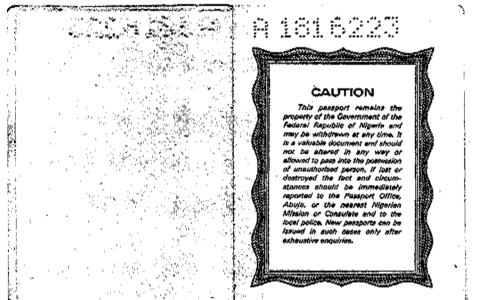




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U.S. Citizenship @ggantigedian sold 5.42

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PROPOSOCI Notice of Action

STATUE ON THE STATUES OF ANTERS CAN

| Receipt Number: | | . " | Case Type: | | |
|------------------|------------|----------------|-------------------------------------|--|--|
| MSC-06-168-19962 | | : | I-130 - Petition for Alien Relative | | |
| Received Date: | Priority 1 | Date: | Petitioner: | | |
| March 17, 2006 | | - | WALKER, NATHANIEL | | |
| Notice Date: | Page | 1 OF 1 | Beneficiary: | | |
| March 21, 2006 | | | WALKER, CLEMENTINA | | |

NATHANIEL WALKER 28 167TH PLACE CALUMET CITY IL 60409

Notice Type:

Receipt Notice

3128329212

Amount Received:

\$190.00

The above application/petition has been received. Please notify us immediately if any of the above information is incorrect. Information about your local office processing times may be obtained by calling the NCSC at 1-800-375-5283. If you find it necessary to contact this office imporiting, you must include a copy of this receipt notice with your inquiry.

If you have questions, you may call the BCIS National Customer Service Center at 1-800-375-5283. For TDD hearing impaired assistance, please call 1-800-767-1833.

If you have Internet access, you can visit the Bureau of Citizenship and Immigration Services website at www.BCIS.gov where you can find valuable information about forms, filing instructions, and immigration services and benefits.

U S BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES

P.O. Box 648005

Lee's Summit, MO 64064

National Customer Service Center: 1-800-375-5283





| Receipt Number: | | Case Type: | | |
|----------------------------------|----------------|--|--|--|
| MSC | -06-168-19960 | I-485 - Application to Register Permanent Residence or Adjust Status | | |
| Received Date: March 17, 2006 | Priority Date: | Applicant: A099305666 WALKER, CLEMENTINA | | |
| Notice Date: March 21, 2006 | Page 1 OF 1 | ASC Code: 3 | | |

CLEMENTINA WALKER 28 167TH PLACE

CALUMET CITY IL 60409

Notice Type:

Receipt Notice

Amount Received:

\$395.00

The above application has been received. Please notify us immediately if any of the above information is incorrect. If you find it necessary to contact this office in writing, you must include a copy of this receipt notice with your inquiry.

BIOMETRICS-

The next step is to have your biometrics taken, if required, at a US Citizenship and Immigration Services (USCIS) Application Support Center (ASC).

PLEASE NOTE-

USCIS WILL SCHEDULE YOUR BIOMETRICS APPOINTMENT. You will be receiving an appointment notice with a specific time, date and place where you will have your fingerprints and/or photos taken.

WHAT TO BRING TO Your appointment -

Please bring this letter and your photo identification to your appointment. Acceptable kinds of photo identification are:

- a passport or national photo identification issued by your country,
- a driver's license.
- a military photo identification, or
- a state-issued photo identification card.

If you do not bring this letter and photo identification, we cannot process you.

Please bring a copy of all receipt notices received from USCIS in relation to your current application for benefits.

CASE STATUS -

Information about your local office processing times may be obtained by calling the NCSC at 1-800-375-5283.

If you have Internet access, you can visit the United States Citizenship and Immigration Services website at www.USCIS.gov where you can find valuable information about forms, filing instructions, and immigration services and benefits.

U. S. Citizenship and Immigration Services

P.O. Box 648005

Lee's Summit, MO 64064

National Customer Service Center: 1-800-375-5283

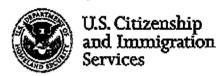




Case 1:08-cv-03512

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Date: 4/27/2006

EKECHUKWU, EBERE

53 WEST JACKSON BOULEVARD STE 1440

CHICAGO, IL 60604

IN RE: WALKER, CLEMENTINA

File:

UT 1755 MET ING CENS MARTING NEW HIRD HIRD HIRD SEER AN HER SET HIRTON

MSC0616819960

A99305666

Request for Additional Evidence (I-485)

This office is unable to complete the processing of your Application to Register Permanent Residence or Adjust Status, (Form I-485) without additional information. Please submit the information requested below. You must submit the information within 87 (eightyseven) days to the following address: U.S. Department of Homeland Security, PO Box 648006, Lee's Summit, MO 64064. Failure to do so will result in a denial. Please include this letter with your response.

You are ineligible for interim employment authorization pursuant to Title 8, Code of Federal Regulations, Section 103.2(b)(10)(ii) until ninety (90) days after the missing initial evidence is received.

All copies must be clear and legible. If you submit a document in any language other than English, it must be submitted with a full English translation. The translator must certify that the translation is complete and accurate, and that he or she is competent to translate. You must submit both the foreign language document and the English translation.

- F. [x] (9) The sponsor and joint sponsor (if required) on Form I-864 must submit the following:
 - Federal income tax returns and W-2s for the most recent tax year or certified Internal Revenue Service (IRS) copies. To obtain return transcripts of your income tax records from the IRS, you may complete Form 4506-T, Request for Transcript of Tax Return, found on the Internet at http://www.irs.gov/ or call toll-free (800) 829-1040 to order a "Return Transcript." If the sponsor was not required to file a federal tax return for the most recent tax year, the sponsor must provide an explanation as to why s/he was not required to file federal income taxes.
 - · Evidence of current employment or self-employment including a letter from each employer on business stationery, showing beginning date of employment, type of work performed, number of hours worked per week, and salary or wages paid. If you are self-employed, submit a recently dated letter on business letterhead or a business license.
- r. (11) We are unable to determine if your household income meets or exceeds 125% of the federal poverty line for the household size claimed on Form I-864 based on the documents submitted with Form I-864. Submit proof that the petitioner's household income meets or exceeds 125% of the federal poverty line. If the petitioner's household income does not meet or exceed 125% of the federal poverty line, you must obtain one joint sponsor whose household income meets or exceeds 125% of the federal poverty line for the joint sponsor's household size. If required, the joint sponsor must submit the documents listed below and a completed and signed Form I-864.
 - Federal income tax returns and W-2s for the most recent tax year or certified Internal Revenue Service (IRS) copies. To obtain return transcripts of your income tax records from the IRS, you may complete Form 4506-T, Request for Transcript of Tax Return, found on the Internet at http://www.irs.gov/ or call toll-free (800) 829-1040 to order a "Return Transcript." If the sponsor was not required to file a federal tax return for the most recent tax year, the sponsor must provide an explanation as to why s/he was not required to file federal income taxes.
 - · Evidence of current employment or self-employment including a letter from each employer on business stationery, showing beginning date of employment, type of work performed, number of hours worked per week, and salary or wages paid. If you are self-employed, submit a recently dated letter on business letterhead or a business license.

NBC Febuary 9, 2006

Revision 8

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Page 1 of 1



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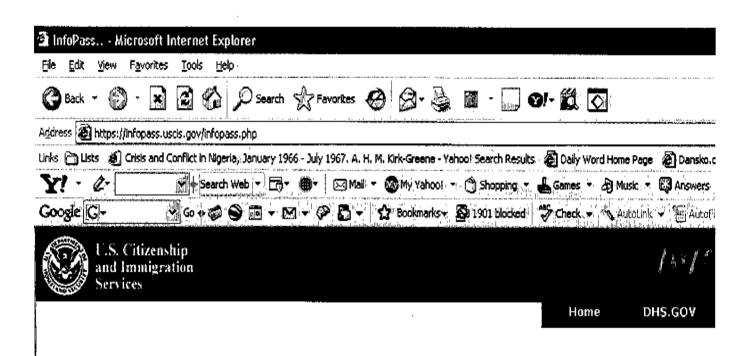
Case 1:08-cv-03512

AZULAYSEIDEN LAW GROUP

Document 1-2

Filed 06/19/2008

3128329212 Page 8 of 11 P.008



Please review the information you have entered:

First Name: Clementina

Middle Name: N

Last Name: Walker

Date of Birth: 26 July, 1963

Zip Code: 60409

Country: UNITED STATES OF AMERICA

Telephone Number: (708) 730 - 9583

Number of persons: 2

e-Mail Address: CLEMENTINA_WALKER@YAHOO.COM

Alien Number (A-number): A- 099305666 Receipt Number: MSC0616819960

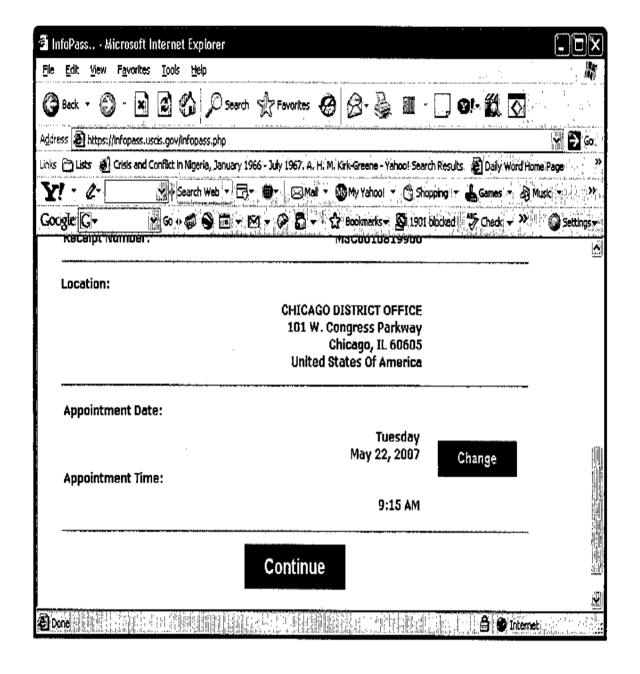
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3128329212 Page 10 of 11

P.010

EBERE N. EKECHUKWU & ASSOCIATES, Filed 06/19/2008

ATTORNEYS AT LAW

THE MONADNOCK BUILDING 53 WEST JACKSON BOULEVARD SUITE 1440 CHICAGO, ILLINOIS 60604

*EBERE N. EKECHUKWU, LL.M. (ḤARV.)

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www.eberelaw.com

OAK BROOK OFFICE

1301 West 22nd Street, Suite 108 Oak Brook, Illinois 60523 Tel: (630) 572-0160 Fax: (630) 572-0166

April 29, 2008

Officer Fiscal Bureau of Citizenship and Immigration Services Examinations and Adjudications 101 West Congress Parkway Chicago, Illinois 60605

RE:

Form I-130: Petition for Alien Relative

Petitioner: Beneficiary: Nathaniel Walker Clementina Walker

File No:

A 99 305 666

Interview Date:

1/31/08

COPY

Dear Officer Fiscal:

I am writing to follow up on the above referenced application. We appeared before you for interview on January 31, 2008. At the end of the interview you informed us that you would notify us of your decision.

Would you please let us know when a decision would be made on this file?

Thank you for your prompt attention to this matter. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely:

Ebere N. Ekechukwu

Enclosure





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Receipt Number: msc0616819962

Application Type: 1130, IMMIGRANT PETITION FOR RELATIVE, FIANCE(E), OR ORPHAN

Current Status: Case received and pending.

On March 21, 2006, we received this I130 IMMIGRANT PETITION FOR RELATIVE, FIANCE(E), OR ORPHAN, and mailed you a notice describing how we will process your case. Please follow any instructions on this notice. We will notify you by mail when we make a decision or if we need something from you. If you move while this case is pending, call customer service. We process cases in the order we receive them. You can use our processing dates to estimate when yours will be done. This case is at our NATIONAL BENEFITS CENTER location. Follow the link below to check processing dates. You can also receive automatic e-mail updates as we process your case. Just follow the link below to register.

You can choose to receive automatic case status updates, which will be sent via email. Please click here to create an account online.

If you would like to see our current Processing Dates for Applications and Petitions, click here.

Note: Case Status is available for Applications and Petitions which were filled at USCIS Service Centers. If you filled at a USCIS Local Office, your case status may not be reviewable online but for processing times on forms filled at that Office please, click here.

If you have a question about case status information provided via this site, or if you have not received a decision from USCIS within the current processing time listed, please contact the USCIS Customer Service at (800) 375 – 5283 or 1-800-767-1833 (TTY).

New Search

Printer Friendly Case Status



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U.S. Department of Homeland Security

